INDEX

CITATIONS

Cases:

606-871—63——1

Cases—Continued

Cases—Continued

Cases—Continued

Statutes:

In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 66

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

J. B. MONTGOMERY, INC.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

BRIEF FOR THE UNITED STATES AND INTERSTATE COMMERCE COMMISSION

OPINIONS BELOW

The opinion of the district court (R. 63–73) is reported at 206 F. Supp. 455. The report of the Interstate Commerce Commission (R. 36–46) appears at 83 M.C.C. 457.[1]

JURISDICTION

The judgment of the district court was entered on July 10, 1962 (R. 74), and the United States and the

[1] The report of Division 1 of the Commission involved two proceedings: MC–72273, *Modification of Permit*, and MC–72273 (Sub-No. 3), *Conversion Application*. Only the Commission's order in the conversion proceeding is involved in this appeal.

Interstate Commerce Commission filed notices of appeal on September 7, 1962 (R. 75–79). This Court noted probable jurisdiction on March 25, 1963. 372 U.S. 952. The jurisdiction of this Court is conferred by 28 U.S.C. 1253 and 2101(b).

QUESTION PRESENTED

Whether the Interstate Commerce Commission, in converting a motor carrier's contract carrier permit to a common carrier certificate under the "grandfather" provision of Section 212(c) of the Interstate Commerce Act, may limit the carrier to serving the outlets of particular types of businesses, in order to insure substantial parity between the carrier's new authority and its authority under the prior permit.

STATUTE INVOLVED

Sections 203(a)(15), 204(a)(6), 208(a), and 212(c) of the Interstate Commerce Act, 49 U.S.C. §§ 303(a)(15), 304(a)(6), 308(a), and 312(c), are set forth in the Appendix, *infra*, pp. 39–41.

STATEMENT

Prior to 1957, the appellee, J. B. Montgomery, Inc., was the holder of a contract carrier permit authorizing extensive operations in a broad geographical area.[2]

The permit (R. 7–9) did not itemize the particular commodities which the carrier could transport, but identified them by the business which dealt in or used

[2] That permit was issued to Montgomery's predecessor in interest on August 31, 1943, under the "grandfather" clause of the Motor Carrier Act of 1935, 49 Stat. 543, 552, 49 U.S.C. 309(a).

them. Thus the permit authorized Montgomery to transport:

> (1) Such commodities as are usually dealt in by wholesale or retail hardware and automobile-accessory business houses, and in connection therewith, equipment, materials, and supplies used in the conduct of such businesses.
>
> (2) Such commodities as are usually dealt in, or used by, meat, fruit, and vegetable packing houses.
>
> (3) Such commodities as are usually dealt in, or used by, wholesale and retail department stores.

The permit also contained a "Keystone restriction" which limited Montgomery to transporting only under contracts with persons operating the businesses specified (R. 47–48). The net result was that Montgomery was authorized to carry a relatively wide variety of commodities, but only for a limited class of shippers.

After the 1957 amendments to the Motor Carrier Act (see, *infra*, pp. 40–41), and in accordance with new Section 212(c) of the Act (49 U.S.C. 312(c)), the Commission instituted a proceeding to determine whether respondent's operations were such as to require the conversion of its contract carrier permit into a common carrier certificate. Montgomery subsequently filed an application for conversion of its permit to a certificate, and various carriers intervened in opposition to the conversion.

After full administrative proceedings, the Commission (Division 1) held that Montgomery's operations did not conform to the amended definition of a con-

696-871—63——2

tract carrier, revoked its permit, and issued to it a common carrier certificate. The certificate, like the prior permit, described the commodities to be carried in terms of the products customarily dealt in or used by various specified types of businesses, such as packing-houses and department stores. In order to enable Montgomery "to furnish substantially the same service as a common carrier as it is now authorized to provide as a contract carrier thereby insuring substantial parity between the permit and certificate authority," the Commission stated that it would confine the carrier's authority "to movements from, to, or between outlets or other facilities of particular businesses of the class of shippers with whom it may now contract" (R. 44). More specifically, the certificate limits Montgomery to providing service on such commodities "to shipments moving from, to, or between wholesale and retail" outlets and stores (R. 50–51).[1]

Montgomery filed suit in the district court to set aside the Commission's order only insofar as it limited the operating authority to movements from, to, or between facilities of particular types of businesses. The district court held the Commission "was without statutory authority to impose the restrictions in ques-

[1] The Commission also imposed in Montgomery's certificate a restriction against the combination of its various operating rights in order to render a through service (a practice known in the industry as "tacking") (R. 43). That restriction, which was approved by this Court in *Tar Asphalt Trucking Co.* v. *United States*, 372 U.S. 596, was not challenged in the district court. The Commission rejected the proposal of the intervenors that a restriction should be imposed upon Montgomery's right to "interchange of traffic with other common carriers" (R. 43).

tion," set aside the Commission's order, and remanded the case for further proceedings (R. 73). In the district court's view, the Commission has no authority "to impose restrictions to accomplish 'substantial parity' between past and future operations" (R. 72).

SUMMARY OF ARGUMENT

At the outset, we develop the background of Section 212(c) of the Interstate Commerce Act. We note the Commission's efforts to confine contract carriers' operations within relatively narrow limits, this Court's ruling in *United States* v. *Contract Steel Carriers, Inc.*, 350 U.S. 409, and, finally, the Congressional resolution of the problem in 1957. Focusing on the so-called Keystone restriction, we show that, before this case, the Commission adopted the practice, followed here, of continuing the effects of the restriction after conversion of the carrier's permit into a certificate of common carriage.

The Commission's position is that Section 212(c), read in the light of its background, must be viewed as a "grandfather" clause. Its purpose was merely to continue, without expanding, the authority of those contract carriers whose operations were lawful under this Court's *Contract Steel Carriers* decision but which no longer fitted the new definition of contract carriage. As we develop at some length, the solution adopted with respect to Keystone restrictions serves this objective by achieving "parity" between the scope of the former permit authority and the new certificate authority.

The objection is made that by specifying a continuance of the commodity and territorial limitations, Congress indicated its unwillingness to have other restrictions imposed on the former contract carriers after conversion of their permits into common carrier certificates. We believe, however, that the language of Section 212(c) cannot be read so narrowly. On the contrary, the injunction that the new certificate "shall authorize the transportation, as a common carrier, of the same commodities between the same points or within the same territory as authorized in the permit" may reasonably be construed as requiring that the effects of the Keystone restriction be carried forward. But, even if the terms "commodities" and "territory" are to be read more grudgingly, it does not follow that the Commission cannot impose additional restrictions. For, so long as the carrier's authority in these respects is carried forward, the Commission remains free to exercise its general power, under other sections of the Motor Carrier Act, to confine operations within proper limits.

Finally, we show that the restriction imposed here is not inconsistent with the new status of the operator as a "common carrier." Recognizing that the former contract carrier was intended to become, by conversion, a full-fledged common carrier, the limitation in suit is fully justified. The restriction here involved is, as we demonstrate, much like the so-called "intended use" and "plant-site" restrictions commonly attached to common carrier certificates.

ARGUMENT

INTRODUCTION

1. Under the scheme of the Motor Carrier Act all motor carriers for hire are either "contract" or "common" carriers.[4] By definition, the common carrier "holds [him]self out to the general public" as able and willing to transport stated classes of passengers or goods. Section 203(a)(14), 49 U.S.C. 303(a)(14). To operate, he must obtain a certificate which, as to new carriers, is issued only if the "public convenience and necessity" require it. Sections 206–207, 49 U.S.C. 306–307. The routes, the rates, and the service of common carriers are fully regulated. Sections 204(a)(1), (4a), 208, 216–217, 49 U.S.C. 304(a)(1), (4a), 308, 316-317. The common carrier cannot refuse anyone he is licensed to serve, nor can he discriminate in his charges. Sections 216(d), 217(b), 49 U.S.C. 316(d), 317(b). By contrast, the contract carrier has traditionally been free to serve whom he will, charging what he pleased, discriminating between customers if he chose. While the contract carrier has been increasingly subjected to regulation,[5] he has remained

[4] The Act also defines, and provides for limited regulation of, "private carriers" who carry their own goods in connection with commercial transactions. See Sections 203(a)(17), 203(c), 204(a)(3), 49 U.S.C. 303(a)(17), 303(c), 304(a)(3).

[5] The 1957 amendments, later discussed, articulated stricter standards for the issuance of contract carrier permits and restricted operations thereunder. See Section 209(b), as amended, 71 Stat. 411, 49 U.S.C. 309(b). The same year, contract carriers serving more than one shipper were required to publish and adhere to *actual* rate schedules, rather than *minimum* rate schedules. See Section 218(a), as amended, 71 Stat. 343, 49 U.S.C. 318(a).

largely immune from the duties and controls imposed on common carriers. This relative freedom from regulation was justified on the ground that contract carriers perform essentially specialized services for a limited group of shippers, so that their activities do not affect the public at large or place them in real competition with common carriers.

With respect to contract carriers, the Commission's primary concern has been to prevent an undue expansion or generalization of operations. In a series of cases the Commission emphasized its view that contract carriers were restricted to specialized service. See *Pregler Extension of Operations*, 23 M.C.C. 691; *Craig Contract Carrier Application*, 31 M.C.C. 705; *Transportation Activities of Midwest Transfer Co.*, 49 M.C.C. 383. In appropriate circumstances, permits were limited by the so-called "Keystone" restriction which authorized a broad transportation service for only a *limited class of shippers*. See *Keystone Transportation Co. Contract Carrier Application*, 19 M.C.C. 475. In *Noble* v. *United States*, 319 U.S. 88, this Court specifically approved the imposition of "Keystone" restrictions.

Over the years, however, it became increasingly difficult for the Commission to maintain the basic distinctions between contract and common carriage. The former statutory definition of "contract carrier" was not very helpful. It characterized the contract carrier as one other than a common carrier who transports passengers or goods "under individual contracts or agreements." 54 Stat. 920. Moreover, the Act expressly guaranteed each contract carrier the right to

expand its operations by securing additional contracts or increasing its equipment "within the scope of [its] permit." 49 Stat. 553. Finally, in *United States* v. *Contract Steel Carriers, Inc.*, 350 U.S. 409, this Court disapproved the Commission's efforts to check what it viewed as undue expansion of contract carrier operations, holding that, not only could no limit be set on the number of contracts, but contract carriers were free to search aggressively for new business within the scope of their licenses.

In the face of this decision, the Commission recommended legislation to deal with the problem. The Commission's 70th Annual Report stated (pp. 162–63):

> We recommend (1) that the definition of contract carrier by motor vehicle as set forth in section 203(a)(15) be amended so as to state clearly the nature of the services which may be performed by such carriers and to provide that such services may be performed under continuing contracts for only one person or a limited number of persons, and (2), if so amended, that section 212 be amended by adding a new paragraph (c) authorizing the Commission to revoke the permit of such a carrier and to issue in lieu thereof a certificate of public convenience and necessity if it finds, after a hearing, that the operations of the permit holder are not those of a contract carrier under the revised definition, are those of a common carrier, and are otherwise lawful.
>
> * * * * *

The Commission's recommendation was incorporated into drafts of bills introduced at the request

of the Commission in February, 1957 (H.R. 5123 and S. 1384, 85th Cong., 1st Sess.). On August 8, 1957, the bill was considered and passed by the Senate. At that time, Senator Smathers of the Senate Committee explained the purpose of the measure (103 Cong. Rec. 14035–6):

> The legislation embodied in S. 1384 undertakes to solve one of the difficult problems facing the Interstate Commerce Commission in recent years—that of determining the line of demarcation between contract and common carriers by motor vehicles. Because the Commission is now specifically prohibited from restricting contract carriers from substituting or adding contracts within the scope of their permits, a substantial number of contract carriers have been able to enter into so many contracts that they are actually performing common-carrier service. Unlimited diversion of traffic from common carriers to contract carriers could impair the common carriers' ability to render adequate service to the general public; consequently, a more precise definition of contract carriage in the Interstate Commerce Act is deemed necessary.
>
> * * * * *

As finally adopted, the new definition of "contract carrier" provides (Section 203(a)(15), 49 U.S.C. 303(a)(15)):

> The term "contract carrier by motor vehicle" means any person which engages in transportation by motor vehicle of passengers or property in interstate or foreign commerce, for compensation (other than transportation referred to in paragraph (14) and the exception

> therein), under continuing contracts with one person or a limited number of persons either (a) for the furnishing of transportation services through the assignment of motor vehicles for a continuing period of time to the exclusive use of each person served or (b) for the furnishing of transportation services designed to meet the distinct need of each individual customer.

The role of contract carriers as furnishers of specialized services was now made clear. And, for the first time, it was explicitly stated that contract carriers could transport only under "*continuing* contracts" with "a *limited* number of persons." To make the restriction plain, Section 209(b) of the Act was amended so as to withdraw, for the future, the former right to expand operations indefinitely. See 71 Stat. 411, 49 U.S.C. 309(b).[6]

With respect to existing permittees, the following provision was adopted (Section 212(c), 49 U.S.C. 312(c)):

> The Commission shall examine each outstanding permit and may within one hundred and eighty days after the date this subsection takes effect institute a proceeding either upon its own initiative, or upon application of a permit holder actually in operation or upon complaint of an interested party, and after notice and hearing revoke a permit and issue in lieu thereof a certificate of public convenience and necessity, if it finds, first, that any person holding a per-

[6] The history of other aspects of the 1957 amendments was canvassed by the Court in *Interstate Commerce Commission* v. *J-T Transport Co.*, 368 U.S. 81, 85–93.

> mit whose operations on the date this subsection takes effect do not conform with the definition of a contract carrier in section 203(a)(15) as in force on and after the date this subsection takes effect; second, are those of a common carrier; and, third, are otherwise lawful. Such certificate so issued shall authorize the transportation, as a common carrier, of the same commodities between the same points or within the same territory as authorized in the permit.

2. The present case involves an application of the conversion provision just quoted. It is conceded that respondent's operations "do not conform with the [present] definition of a contract carrier," "are those of a common carrier," and "are otherwise lawful." Accordingly, Montgomery is plainly entitled to certification as a common carrier. And the certificate, it is clear, must embody the same territorial and commodity authority as the prior permit. The question here is whether the effects of the Keystone restriction of the permit—limiting respondent to transportation under contracts with hardware and automobile accessory business houses, meat, fruit and vegetable packing houses, and department stores—shall be carried forward in the certificate in some appropriate manner.

The problem is not new to the Commission. The matter was fully canvassed in *T. T. Brooks Trucking Co., Inc., Conversion Application*, 81 M.C.C. 561 (1959). The Commission there consolidated for consideration and decision ten applications by contract carriers for conversion to common carrier status under section 212(c). Besides the applicants, numerous protestants and the Contract Carrier Conference and the Regular

Common Carrier Conference appeared. All parties diligently applied themselves to assisting the Commission in resolving for the present and future administration of section 212(c) several issues raised by the conversion of contract carrier permits into common carrier certificates. The solution ultimately evolved is accordingly entitled to special weight.

In the course of its opinion in *Brooks*, the Commission discussed the purpose of the new conversion provision at some length and concluded (81 M.C.C. 571):

> In view of the utilization of the substantial parity test in the past, and in the absence of any congressional expression to the contrary, we are constrained to hold here that the so-called "grandfather" clause contained in section 212(c) should be administered on the basis of a "substantial parity" test with respect to the conversion of *operating authorities* involved therein. When so applied, it is obvious that the certificates issued to converted carriers should authorize the transportation of the same commodities to and from the same points and (in the case of carriers with territorial grants) within the same territories for which they now hold permits, so as to insure that nothing commoditywise or territorially would be taken away from the converting carrier. By the same token, this does not mean that the converted carrier should be granted authority, which by reason of being denominated a certificate instead of a permit, would authorize service so far beyond the scope of its previously authorized service that the test of "substantial parity" would be nullified. In other words,

mere conversion should not create for a converted carrier new common-carrier operating rights which are not substantially similar, with respect to commodities and territory, to those intrinsic in its old status or which are not within the normal operating framework of its existing permits.

The Commission then turned to the specific problem of Keystone restrictions (81 M.C.C. at 575–576):

A Keystone restriction in a contract carrier's permit limits not the commodities which may be transported or the territory which may be served, but the persons or class of persons with whom the carrier may enter into transportation contracts. Such restrictions take their names from the application proceeding in which they were first imposed, *Keystone Transp. Co. Contract Carrier Application,* 19 M.C.C. 475, and our power to impose them was affirmed by the Supreme Court in *Noble* v. *United States,* 319 U.S. 88. The Keystone restriction was devised in order to enable this Commission to grant contract-carrier authority which was at once broad enough, with respect to the commodities authorized, to enable the carrier to provide a complete service for the shippers which it served, and, at the same time, would tie the carrier down to service for one specific industry or type of business enterprise, thus affording protection to carriers serving other classes of shippers from unwarranted competition.

Womeldorf is the only applicant here whose permits contain Keystone restrictions. He is authorized to transport (1) such commodities as are dealt in by chain retail 5-cent-to-1-dollar

stores or stores of like character, restricted to service under special and individual contracts with persons who operate chain retail 5-cent-to-1-dollar stores, the business of which is the sale of general merchandise, and (2) such commodities as are sold in, or used in connection with, the operation of gasoline service stations, with certain exceptions, under contracts with persons, the principal business of which is the production, sale, and distribution of petroleum products. The examiner recommended that in lieu of Womeldorf's variety store permits, certificates be issued authorizing the transportation of the same commodities named in the permits but "limited to the transportation of shipments moving from, to, or between warehouses or retail stores of persons * * * who operate retail stores for the sale of general merchandise;" and that his service-station authority be "limited to the transportation of shipments moving from, to, or between refineries, warehouses, or gasoline service stations of persons whose principal business is the production, sale, or distribution of petroleum products."

Womeldorf and the Contract Carrier Conference contend that the continuation of any such limitations in the converted authority is improper (1) because they were intended to protect common carriers from the competition of contract carriers and, therefore, the reason for their imposition will no longer exist when the contract carrier itself becomes a common carrier, and (2) because a restriction limiting the type of shipper which may be served would be inconsistent with the obligation of a common carrier to hold out its service to the entire

shipping public. The Common Carrier Conference says that the effect of Keystone restrictions should be maintained by the imposition of appropriate limitations in the certificates issued to converted carriers. They assert, however, that the examiner erred in limiting Womeldorf's operations under his variety store authority to the transportation of shipments moving from, to, or between establishments of persons who operate retail stores for the sale of general merchandise, instead of restricting them to service at establishments of persons who operate retail chain 5-cent-to-1-dollar stores.

We conclude that in instances where Keystone restrictions appear in the permits of carriers who are to be converted the certificates to be issued in lieu thereof should contain appropriate terms which will continue to some extent, at least, the effectiveness of the Keystone restrictions. Only in this way can substantial parity between the old and the new operating authorities be maintained. We do not think, however, that the form of restriction which the examiner recommended to be imposed in Womeldorf's certificate is appropriate, referring, as it does, to service at establishments of "persons" conducting a particular type of business. Rather, we shall restrict Womeldorf's variety store authority to the transportation of such merchandise as is dealt in by retail chain 5-cent-to-1-dollar stores when moving to, from, or between the warehouses or retail outlets of such stores; and we shall limit his gasoline service station authority to the transportation of such commodities that are sold in, or used in connection with, the operation of gasoline serv-

ice stations when moving from or to the warehouses, plants, or other facilities of producers or distributors of such commodities. These restrictions or limitations are, in part, in the nature of and similar to the form of grants of territorial authority occasionally found in common-carrier certificates in which service is authorized at specified plant sites. They will enable Womeldorf to furnish substantially the same transportation service as a common carrier that he is now authorized to provide as a contract carrier, and will accomplish what we conceive to be the purpose of the statute, namely, to attain substantial parity between the permit and certificate authority. What has been concluded here as to the exact type of restriction or limitation to be imposed is based on the facts before us, and the language employed in limitations placed in certificates issued by us in other section 212(c) proceedings will depend on the form the restrictions take in the existing permits which are being considered.

The Commission's order in the *Brooks* case, determining that it was necessary to continue, to some extent, the effects of the Keystone restriction in the license of converted carriers, is the landmark decision in this field. We submit it represents a fair and reasonable solution to several of the problems arising in the administration of Section 212(c).[7]

The identical solution was followed here. Thus, respondent's former permit as a contract carrier au-

[7] For a discussion of the Keystone restriction problem in conversion cases arising under Section 212(c), see Note, 107 Pa. L. Rev. 1150, 1170–1173 (1959).

thorized it to transport, between stated points, "[s]uch commodities as are usually dealt in, or used by, wholesale and retail department stores" only "*under * * * contracts or agreements with persons * * * who operate wholesale or retail department stores, the business of which is the sale of general merchandise*" (R. 8–9). And the corresponding provision of the new common carrier certificate authorizes the transportation of the same commodities between the same points, "*restricted to shipments moving, from, to, or between wholesale or retail department stores*" (R. 58).[8]

The practical effect of the new provision is to eliminate the restriction as to the shippers whom the carrier may serve, which as the Commission noted (R. 44, 83 M.C.C. 463) would be "inappropriate" in a common carrier certificate, while retaining the limitations which the Keystone restriction had in fact imposed on the commodities, territory, and service authorized by the permit. The only question here is whether the Commission's announced purpose of carrying forward those limitations after conversion is authorized by Section 212(c).

I. THE RESTRICTION IMPOSED EFFECTUATES THE POLICY OF SECTION 212(C) AS A "GRANDFATHER" CLAUSE

Its history makes it clear that Section 212(c) was intended by Congress as a "grandfather" clause. It

[8] Identical Keystone provisions with respect to respondent's authority to carry hardware and automobile accessory business house goods and commodities handled by meat, fruit and vegetable packing houses (R. 8) were similarly carried forward by restricting the certificate to shipments to or from the outlets of such businesses (R. 57–58).

was described as a grandfather clause in the Commission's 70th Annual Report, which was the genesis of the entire statute;[9] it was referred to as such by the Chairman of the Commission in his presentation of the bill before the Senate Committee;[10] in the hearings before the Senate Committee, references to the bill as a grandfather clause were made by representatives of both the Common Carrier Conference[11] and the Contract Carrier Conference[12] of the American Trucking Associations; and it was so described by the House Committee on Interstate and Foreign Commerce.[13] The Commission, as we have seen, so viewed it in the first of the conversion cases to be decided under Section 212(c). *T.T. Brooks Trucking Co., Inc., Conversion Application,* 81 M.C.C. 561.

The characterization of Section 212(c) as a grandfather clause is revealing. Over the years the phrase has acquired a distinct meaning in the regulation of transportation. Cf. *Interstate Commerce Commission* v. *Parker,* 326 U.S. 60, 65. Implicit in the concept of a grandfather clause is the duty of the Commission to administer the statute according to the concept of substantial parity. *United States* v. *Carolina Freight Carriers Corp.,* 315 U.S. 475, 480–81; *Alton R.R. Co.* v.

[9] 70th Annual Report of the Interstate Commerce Commission, p. 163.

[10] Hearings before a Subcommittee of the Senate Interstate and Foreign Commerce Committee on S. 1384, etc., *Surface Transportation—Scope of Authority of ICC*, 85th Cong., 1st Sess. (1957) at 24, 28.

[11] *Id.*, at 345.

[12] *Id.*, at 299.

[13] H. Rep. No. 970, 85th Cong., 1st Sess., at p. 4.

United States, 315 U.S. 15, 20–24; *Howard Hall Co.* v. *United States*, 315 U.S. 495, 498–99. The Commission was accordingly justified in concluding that Section 212(c) contemplates the issuance of a certificate which "insure[s] that nothing commoditywise or territorially would be taken away from the converting carrier," and which at the same time does not "by reason of being denominated a certificate instead of a permit * * * create for a converted carrier new common-carrier operating rights which are not substantially similar, with respect to commodities and territory, to those intrinsic in its old status or which are not within the normal operating framework of its existing permits." *T. T. Brooks Trucking Co., Inc., Conversion Application*, 81 M.C.C. 561, 571.

The propriety of administering Section 212(c) according to the concept of substantial parity has been recognized by the United States District Court for the District of New Jersey in a decision affirmed by this Court, *Tar Asphalt Trucking Co.* v. *United States*, 208 F. Supp. 611, 614, affirmed *per curiam*, 372 U.S. 596.[14] The Commission had inserted in the certificate issued to the converted carrier a prohibition against "tacking" of operating authorities,[15] a practice forbidden to

[14] However, as we pointed out in our Motion to Affirm filed in the *Tar Asphalt* case, the Court's affirmance of that decision is not necessarily conclusive of the present case, for the imposition of the no-tacking restriction there involved could also be justified on the ground that the absence of such restriction would result in authorization to operate between points *not* authorized by the permit, contrary to the literal wording of the statute.

[15] "Tacking" is a practice by which a carrier which holds authority to transport commodities between points *A* and *B*, and

contract carriers,[16] reasoning that the conversion of the permit into a certificate should not so greatly expand the carrier's permissible scope of operations. In affirming, the district court said:

> The purpose of the limitation contained in that proviso is obviously to maintain substantial parity with the operating authority contained in Tar Asphalt's contract carrier permit, and is in accord with the legislative intent implicit in Section 312(c) of the Act which provides for "the transportation, as a common carrier, of the same commodities between the same points or within the same territory as authorized in the permit" * * *. See *Crescent Express Lines, Inc.* v. *United States*, 1943, 320 U.S. 401. * * * The contemporaneous construction of the Act by the Commission in this regard, as set forth in its decision in T. T. Brooks Trucking Co., Inc., Conversion Application, 81 MCC 561 (1959) is entitled to great weight. *United States* v. *American Trucking Associations*, 1940, 310 U.S. 534 * * *. We accept it as a well reasoned authority.

Subsequently, in *P. Saldutti and Son, Inc.* v. *United States*, 210 F. Supp. 307, 314, the same district court,

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a separate authority to transport the same commodities between *B* and *C*, combines the two authorities and offers a through service between *A* and *C*.

[16] See, *e.g.*, *Emery Transportation Co.* v. *United States*, 91 F. Supp. 644, 646 (S.D. Ohio), affirmed *per curiam*, 339 U.S. 955. Common carriers, on the contrary, are allowed to "tack," unless their certificates expressly prohibit it. See, *e.g.*, *Consolidated Freightways, Inc.* v. *Lenzmeier, Inc.*, 66 M.C.C. 615, 617; *Fleetlines, Inc.* v. *Arrowhead Freight Lines, Ltd.*, 54 M.C.C. 279, 285; *Donald B. Zirbel—Investigation of Operations*, 53 M.C.C. 684, 686; *Aetna Freight Lines, Inc., Interpretation of Certificate*, 48 M.C.C. 610, 612.

in upholding the Commission's rephrasing of a permit's commodity description in the new certificate, reiterated its view that "[u]nder section 212(c) of the Act, a converted carrier is entitled to receive at the hands of the Commission a certificate that maintains parity with the operating authority contained in its contract carrier permit. The controlling factor is the operating rights authorized by the present permit." The court again recognized that it is the substance of the permit's operating authority, rather than its literal language, which is contemplated by the grandfather provision in Section 212(c).

Furthermore, the very language employed by Congress indicates an intention that the grandfather clause of Section 212(c) be administered according to the same standards as the other grandfather clauses of the Motor Carrier Act. Congress provided that the new certificate should authorize the converted carrier to transport "the same commodities between the same points or within the same territory" as authorized in the permit. In its very next session, that same Congress utilized virtually identical words to explain the effect of the grandfather clause of Section 7(c) of the Transportation Act of 1958, 72 Stat. 573–574, which is couched in the exact terminology of the original grandfather clauses of the 1935 Act. Both the Senate Report and the House Report, as well as the Conference Report, characterized Section 7(c) as enabling carriers "to continue hauling *the same commodities within the same areas or between the same points.*" (Emphasis added.) S. Rep. 1647, 85th Cong., 2d Sess. at 23;

H. Rep. 1922, 85th Cong., 2d Sess. at 17; H. Conf. Rep. 2274, 85th Cong., 2d Sess. at p. 15.

Applying the substantial parity test, it is plain that the Keystone restriction of the permit must be carried over in some form in the certificate. Otherwise, the statutory conversion of respondent's operating authority would effect a vast expansion of the permissible scope of operations and a drastic change in the competitive situation." Thus, the commodity descriptions in Montgomery's permits were broad enough to cover such major items as textiles, clothing, groceries, building materials, motor vehicles, office and kitchen furniture and equipment, petroleum products, and office supplies. Under those permits, however, respondent was restricted to transporting this broad range of products only for persons operating the designated classes of business. In the absence of any provision continuing the effect of that restriction in the certificate issued on conversion, Montgomery would be transformed from a limited carrier serving the needs of particular businesses, such as department stores, virtually to a general commodities carrier serving all comers. "The 'grandfather' clause would be utilized not to preserve the position which the carrier had obtained in the nation's transportation system, but to enlarge and expand the business beyond the pattern which it had acquired prior to [the critical date]." *Noble* v. *United States*, 319 U.S. 88, 92.

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[11] On August 22, 1957, Montgomery had contracts with only 12 shippers (R. 22, 42) and operated about 8 tractors and 14 trailers (R. 22).

Although it is possible to postulate isolated examples of operations which conceivably could have been performed by Montgomery under its old permit but cannot be performed under the wording of the new certificate, such as a movement under contract with a department store wholesaler from a shoe manufacturer to a specialty shoe retailer, this would be a small price to pay for the avoidance of the mischief which the grant of unlimited authority sought by Montgomery would create.[18] Moreover, even if the restrictions of the new certificate are given full sway, Montgomery as a common carrier now has somewhat greater authority than it had prior to conversion. It is no longer limited to serving its contract shippers but may now offer its services to anyone who has shipments moving within the scope of its authority. It may now interchange with other common carriers and thus provide service beyond the geographical limits of its own certificate. It is in a position to compete with other common carriers for the business of shippers who do not have a sufficient volume of shipments to warrant entering into a continuing contract with a contract carrier. In short, the very fact of conversion has created for Montgomery greater opportunities, and there is no warrant for further expanding the scope of its operating authority. There is certainly nothing to indicate that Congress intended that the conversion of their permits to certificates

[18] The district court did not reach questions of whether the certificate was broad enough to achieve substantial parity nor whether there were fringe ambiguities in the certificate, but denied Commission authority to maintain substantial parity upon a Section 212(c) conversion.

would confer upon the converted carriers the windfall to their operating authorities which the decision of the district court would permit."[19]

II. THE STATUTORY INJUNCTION TO CARRY OVER THE COMMODITY AND TERRITORIAL LIMITATIONS OF THE PERMIT DOES NOT BAR THE IMPOSITION OF THE PRESENT RESTRICTION

Section 212(c) provides that, upon conversion, the certificate "shall authorize the transportation, as a common carrier, of the *same commodities* between the *same points* or within the *same territory* as authorized by the permit." (Emphasis added.) This, it is argued, means that the Commission is only empowered to transfer from the converted carrier's permit to a new certificate the existing language of the permit's commodity and territorial descriptions, without regard to the limitations that other provisions of the permit had in fact imposed.

At the outset, we note that such literalism is inconsistent with accepted rules of interpretation in the area of administrative regulation. This Court has repeatedly emphasized that the determination of an

[19] See S. Rep. No. 703, 85th Cong., 1st Sess.; H. Rep. No. 970, 85th Cong., 1st Sess.; Note, 107 Pa. L. Rev. 1150, 1170–1173. The statement of Chairman Clarke, relied upon by the district court (R. 71–72), is not to the contrary. As the Chairman stated, Section 212(c) gives the converted carrier "greater opportunity" in that in addition to his contract shippers, he has "the opportunity to serve the general public as well as the obligation." As a common carrier he is no longer limited to serving his contract shippers but is entitled to serve all members of the general public who have shipments moving within the scope of his operating authority. But neither this statement nor anything else in the legislative history indicates that any expansion of the scope of that operating authority was contemplated.

agency's statutory authority "does not stop with a section-by-section search for the phrase * * * among the literal words of the statutory provisions," *American Trucking Associations* v. *United States*, 344 U.S. 298, 309, and that "meaning, though not explicitly stated in words, may be embedded in a coherent scheme," *United States* v. *Ruzicka*, 329 U.S. 287, 292. "[A] section of a statute should not be read in isolation from the context of the whole Act * * *" *Richards* v. *United States*, 369 U.S. 1, 11.

In upholding the authority of the Interstate Commerce Commission to regulate the leasing of trucks by motor carriers subject to Commission regulation, despite the absence of any specific provision granting the Commission such authority, this Court, in *American Trucking Associations* v. *United States, supra*, at 309, stated:

> Here, appellants have framed their position as a broadside attack on the Commission's asserted power. All urge upon us the fact that nowhere in the Act is there an express delegation of power to control, regulate or affect leasing practices, and it is further insisted that in each separate provision of the Act granting regulatory authority there is no direct implication of such power. Our function, however, does not stop with a section-by-section search for the phrase "regulation of leasing practices" among the literal words of the statutory provisions. As a matter of principle, we might agree with appellants' contentions if we thought it a reasonable canon of interpretation that the draftsmen of acts delegating agency powers, as a practical and realistic matter, can or do include specific consideration of every

> evil sought to be corrected. But no great acquaintance with practical affairs is required to know that such prescience, either in fact or in the minds of Congress, does not exist. *National Broadcasting Co.* v. *United States*, 319 U.S. 190, 219–220; *Phelps Dodge Corp.* v. *Labor Board*, 313 U.S. 177, 193–194. Its very absence, moreover, is precisely one of the reasons why regulatory agencies such as the Commission are created, for it is the fond hope of their authors that they bring to their work the expert's familiarity with industry conditions which members of the delegating legislatures cannot be expected to possess. *United States* v. *Pennsylvania R. Co.*, 323 U.S. 612.

See also *National Broadcasting Co.* v. *United States*, 319 U.S. 190, 219.

When viewed in the context of the Motor Carrier Act and in light of the purpose for which it was enacted, Section 212(c) clearly contemplates the imposition of restrictions in common carrier certificates issued to converted contract carriers wherever such restrictions are necessary to accomplish an accurate restatement of the operating rights conferred by the previously held permit.

Fairly read, the terms "same commodities" and "same territory" include the restriction here carried forward. For, although the Keystone restriction in a contract carrier permit is phrased as a restriction on the class of shippers with whom the carrier may contract, in actual effect it also limits both the commodities the carrier may transport and the territory it may serve. For example, one of Montgomery's permits authorized it to transport "such commodities as are

usually dealt in, or used by, wholesale and retail department stores." That commodity description, standing alone, would authorize the transportation of any commodities of a class customarily dealt in or used by department stores, regardless of whether the commodities at the time of shipment had any actual connection with a department store. See *Andrew G. Nelson, Inc.* v. *United States*, 355 U.S. 554, 560, and cases cited therein. In view of the wide range of goods carried by modern department stores, this is tantamount to authority to transport general commodities. But Montgomery was further limited to transporting such commodities "under contracts or agreements with persons * * * who operate wholesale or retail department stores." Because of that Keystone restriction, Montgomery was thus limited to the transportation of commodities *actually* destined for use or trade by department stores. In this manner, the Keystone restriction limited the scope of the commodity description of the permit.

By the same token, although the territorial description of Montgomery's permit authorized the movement of the above commodities between all points in a large midwestern area,[20] it was in fact limited to the transportation of those commodities to or from points used by the businesses with whom it could contract.

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[20] *E.g.*, Montgomery's department store authority included: "Between Denver, Colo., and Chicago and Blue Island, Ill., on the one hand, and, on the other, points and places in Kansas, Nebraska, and Iowa, those in Colorado on and east of U.S. Highway 87 and on and north of U.S. Highway 50, and those in Illinois north of a line extending from a point on the Missouri-Illinois State line directly west of Springfield, Ill., through Springfield, to the Illinois-Indiana State line."

Thus the Commission properly determined that, in order to limit Montgomery to the transportation of only "the same commodities between the same points or within the same territory as authorized in the permit", as provided by Section 212(c), it was necessary to incorporate in the certificate "terms which will continue, to some extent, at least, the effectiveness of [the Keystone] restrictions" (R. 44).

But even if it be argued that we read the terms too loosely and that Section 212(c) does not advert to the type of restriction here in suit, it does not follow that the Commission had no power to impose it. For, if the Keystone restriction is not classified as a commodity or territorial limitation, then, while Section 212(c) does not expressly *require* its restatement in the certificate, neither does the statute prohibit the Commission from imposing a similar limitation.

Indeed, the Congressional silence on the issue would seem to indicate "a continuation of the administrative and judicial interpretation of [the earlier statutes]." *Interstate Commerce Commission* v. *Parker,* 326 U.S. 60, 65. Congress must have been aware of this Court's construction of the earlier grandfather clauses as providing for the issuance of a certificate which maintains substantial parity with prior operations. If it had intended that this new grandfather clause be administered under different standards, a provision limiting the Commission's authority could easily have been included in the statute.

The significance of the absence of any provision so limiting the authority of the Commission is further pointed up by the fact that such provisions have been

included in other sections of the Act where Congress intended to limit the Commission's authority to restrict certificates or permits issued by it. See, *e.g.*, Section 208(a), which provides that the Commission shall not have the power to impose restrictions on the right of a carrier to add to its equipment or facilities;[21] and Section 209(b) which, prior to the 1957 amendments, provided that the Commission shall not have the power to impose restrictions on the number of contracts under which a contract carrier might operate.[22]

Furthermore, it is not unreasonable to read into Section 212(c) by implication the powers of specification granted the Commission by Section 208(a) of the Act.[23] As this Court pointed out in *United States* v.

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[21] 49 U.S.C. § 308(a): "* * * *Provided however*, That no terms, conditions, or limitations shall restrict the right of the carrier to add to his or its equipment and facilities over the routes, between the termini, or within the territory specified in the certificate, as the development of the business and the demand of the public shall require."

[22] 49 U.S.C. (1952 ed.) § 309(b); "* * * *Provided however*, That no terms, conditions, or limitations shall restrict the right of the carrier to substitute or add contracts within the scope of the permit, or to add to his or its equipment and facilities, within the scope of the permit, as the development of the business and the demands of the public may require."

[23] Cf. *American Trucking Associations* v. *United States*, 364 U.S. 1; *United States* v. *Texas and Pacific Motor Transport Co.*, 340 U.S. 450; *United States* v. *Rock Island Motor Transit Co.*, 340 U.S. 419; and *Interstate Commerce Commission* v. *Parker*, 326 U.S. 60, where this Court approved the Commission's practice of imposing "auxiliary and supplemental" restrictions in certificates and permits issued to motor carrier subsidiaries of railroads, although that practice results from the importation into sections 207 and 209 of the Act of a standard articulated only in section 5(2)(b), pertaining to railroad acquisitions of motor carriers.

Carolina Freight Carriers Corp., supra, at 480, in upholding the imposition of restrictions to maintain substantial parity in certificates issued under the earlier grandfather clauses, Section 208(a) requires that certificates issued by the Commission "specify the service to be rendered." Section 208(a) further empowers the Commission to attach to certificates issued by it "reasonable terms, conditions and limitations as the public convenience and necessity may from time to time require * * *". Although, as the district court pointed out (R. 69–70), Section 208(a) makes specific reference only to Sections 206 and 207 of the Act, it was emphasized by Senator Wheeler, Chairman of the Committee on Interstate and Foreign Commerce, that "Section 208(a) * * * permits the Commission to attach to *all* certificates, whether granted under the grandfather clause or otherwise, reasonable terms, conditions and limitations." (Emphasis added.) 79 Cong. Rec. 5654. It would be incongruous if those who obtained their certificates under Section 212(c) were alone immune from the Commission's general power over certificates.

Finally, Section 204(a)(6) authorizes the Commission "[t]o administer, execute, and enforce all provisions of this chapter, to make all necessary orders in connection therewith, and to prescribe rules, regulations, and procedures for such administration." The breadth of the power thus granted the Commission was emphasized by this Court in *American Trucking Associations* v. *United States,* 344 U.S. at 311, where that section was described as "coterminous with the scope of agency regulation itself." Here the Com-

mission has issued an order which it believes to be necessary to the proper administration and execution of the grandfather clause of Section 212(c). As such, it is well within that broad power.

III. THE RESTRICTION EMBODIED IN THE CERTIFICATE IS NOT INCONSISTENT WITH RESPONDENT'S NEW STATUS AS A COMMON CARRIER

Respondent argued below (R. 5) that the restriction imposed by the Commission in lieu of the former Keystone restriction is a limitation on the shippers it may serve, contrary to the right and duty of a common carrier to serve the general public. But there is substantial precedent for the imposition of like restrictions in the certificates of common carriers.

An analogous problem arose in cases involving the Commission's utilization of commodity descriptions involving the so-called "intended use test." The "intended use test" is a technique by which commodities are described in terms of their intended use. Thus, "building materials" means materials intended for use in construction or repair of a building. *Ace Lines, Inc.* v. *United States,* 197 F. Supp. 591 (S.D. Ia.). Similar products not intended for such use at the time of shipment are not within the carrier's authority.

Another comparable situation is illustrated by *Morehouse* v. *United States,* 194 F. Supp. 940, 945–46 (D. Neb. 1961), affirmed, 368 U.S. 348. There, a common carrier was authorized to transport "packinghouse products". The Commission held that this authorized only the transportation of products which

had, in fact, been produced or distributed by a packinghouse. Products of the same type, which had been produced or distributed by someone other than a packinghouse, were not within the commodity description. In response to a contention by the plaintiff that this constituted a restriction on the shippers he was authorized to serve, in derogation of his duties as a common carrier, the court said (194 F. Supp. at 945–46):

> Plaintiff here seeks to distinguish his situation from that before the Commission in the Chrispens case, contending that, unlike the respondent in the Chrispens case, he is a common carrier upon whom no "keystone" restriction, or limitation as to shippers or classes of shippers that he can serve, may be imposed. The Commission held, however, that while the Chrispens case involved the permit of a contract carrier, the reasoning from a commodity standpoint was applicable to plaintiff here. That plaintiff's certificate was not unrestricted, because by its very terms the transportation authorized therein was limited to certain classes of commodities, namely, "packinghouse products". Plaintiff is not limited as to the shippers he may serve, however, this does not mean that the limitations inherent in his commodity authorization can be ignored or that the commodity description "packinghouse products" in his certificate authorizes any different transportation, commoditywise, than the same authority in a permit. The fact that plaintiff is unrestricted as to the shippers he may serve affords no basis whatever for the expansion of

the scope of the commodity description in any permit issued by the Commission.

In construing analogous commodity descriptions the Commission has consistently held them not to be restrictive of the shippers or class of shippers that the carrier can serve. See and compare Andrew G. Nelson, Inc.—Investigation of Operations, 63 M.C.C. 407, 410, sustained Andrew G. Nelson, Inc. *v.* United States, D.C., 150 F. Supp. 181, affirmed, 355 U.S. 554, 78 S.Ct. 496, 2 L.Ed. 2d 484, where the Commission held that the commodity limitation in its permit does not limit the class or type of persons with whom it may contract as would a "keystone" restriction; and Sanders Extension of Operations—Washington, D.C., 74 M.C.C. 210, 213–214, where the Commission held that as long as the commodities transported are such as are dealt in by wholesale and retail grocery stores, respondent was free to transport them for any shipper or consignee regardless of the business in which he or it is engaged.

It is thus well established that a common carrier's duty to serve the general public may be confined by the restrictions inherent in its commodity description. The mere fact that only a particular class of shippers is likely to have a need for the service that the carrier is authorized to perform is not in derogation of its status as a common carrier. As a practical matter, any common carrier of specialized products is likely to confine his services, to a large extent, to a particular class of shippers, simply because they are the shippers who have the need for his services. This practical situation, however, in no way militates against his status as a common carrier.

Service restrictions similar to those employed in the instant case are not unusual in common carrier certificates. For example, a "plant site" restriction is frequently used by the Commission in a certificate in order to describe the service of a carrier who has proved the need for service only from a particular plant. Thus the certificate will authorized the transportation of particular commodities, "when moving from the site of plant X to [named destinations]". *E.g., Quickie Transport Co., Ext.—Pine Bend, Minn.*, 14 Fed. Car. Cases ¶ 35,096 (1961); *Kreider Truck Service, Inc., Ext.—Lard Oils*, 82 M.C.C. 565 (1960); *J. & M. Transportation Co., Inc., Ext.—Salt*, 82 M.C.C. 264 (1960); *Dallas & Mavis Forwarding Co., Inc., Ext.—Cleveland*, 78 M.C.C. 676, 679 (1959); *Miller Petroleum Transporters Ext.—Petroleum*, 78 M.C.C. 631, 635 (1958); *Ryder Tank Lines, Inc., Ext.—Hamilton & Hickman Counties*, 78 M.C.C. 409, 421 (1958); *Liquid Transporters, Inc., Ext.—Siloam, Ky.*, 78 M.C.C. 89, 95 (1958); *National Cartage Co., Ext.—Stickney, Ill.*, 78 M.C.C. 75, 78 (1958); *Northern Tank Line, Ext.—South Dakota*, 77 M.C.C. 35, 38 (1958); *Hayes Freight Lines, Inc., Ext.—Texas*, 77 M.C.C. 233, 238 (1958); *Boyd E. Richner, Inc., Ext.—Grants, N. Mex.*, 77 M.C.C. 766, 769 (1958); *Younger Bros., Inc., Ext.—Petrocarbon Chemicals*, 77 M.C.C. 15, 18 (1958).

The purpose of such authorizations was explained by the Commission in the *Kreider* case, *supra*, at 567.

> We cannot agree with applicant that the grant of plant-site authority is too restrictive. Although plant-site restrictions are not normally imposed in grants of authority to com-

> mon carriers, there are circumstances, such as are here present, which require the imposition of such a restriction. The application is supported by only one shipper whose traffic to Memphis presently amounts to only about 3.5 truckloads a month. The shipper is located at a point lying within the commercial zone of St. Louis, and the resulting scope of the authority, if the restriction were removed, would afford applicant the opportunity to serve a vast public far exceeding the limited proof of a need for service shown by the single supporting shipper. * * *

The same reasoning is equally applicable here. If the restrictions inherent in respondent's permit were completely removed, it would be given the opportunity to perform far greater services than it had ever been authorized to perform as a contract carrier. This would result in a totally new competitive situation never contemplated by the conversion provisions of the statute.

In other proceedings, the Commission has limited common carriers to plant-site destinations (as distinguished from the plant-site origins involved in the above-cited cases), *William O. Mattox, Ext.—Old Bridge, N.J.*, 77 M.C.C. 165, 168 (1958); to shipments originating at specified points outside the United States, *Chemical Tank Lines, Inc., Ext.—Willow Island, W. Va.*, 77 M.C.C. 39, 42 (1958) ("restricted to shipments originating in Canada"); *Thomas W. Murray—Territorial Operations*, 11 Fed. Car. Cases ¶33,638 (1956) ("restricted to traffic moving to or from the territory of Alaska"); and to traffic "mov-

ing on Government bills of lading", *Arco Auto Carriers, Inc., Ext.—North Tarrytown, N.Y.*, 13 Fed. Car. Cases ¶34,262 (1958); *C & D Transp. Co., Inc., Ext.—New Orleans to Orange*, 78 M.C.C. 293, 295 (1958). Such restrictions as these have never been considered in any way inconsistent with a carrier's status as a common carrier.

In at least one case, the Commission has employed almost the identical language used in the instant case. In *L. Nelson & Sons Transp. Co. Ext.—Synthetics*, 62 M.C.C. 271, 283 (1953), the applicant was granted a common carrier certificate to transport "materials used in the manufacture of cloth, waste materials, resulting from the manufacture of cloth, and supplies and materials used in connection with the transportation or processing of these commodities *when moving to or from places of processing.*" (Emphasis added.)

We submit that there is nothing unusual in the type of service restriction incorporated in the certificate in suit. The limitation is fully consistent with respondent's new status as a common carrier:

In the final analysis, the Commission's imposition of restrictions preserving a substantial parity between Montgomery's prior and future operating authority reflects a judgment fully responsive to the intent of Congress in enacting Section 212(c) and to the Congressional mandate expressed in the National Transportation Policy, namely, that the Act be administered to the end of developing and preserving an adequate, efficient, and economic national transportation system.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed.

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APPENDIX

STATUTE INVOLVED

Section 203(a)(15) of the Interstate Commerce Act (49 U.S.C. 303(a)(15)), as amended August 22, 1957; 71 Stat. 411, provides:

> The term "contract carrier by motor vehicle" means any person which engages in transportation by motor vehicle of passengers or property in interstate or foreign commerce, for compensation (other than transportation referred to in paragraph (14) and the exception therein), under continuing contracts with one person or a limited number of persons either (a) for the furnishing of transportation services through the assignment of motor vehicles for a continuing period of time to the exclusive use of each person served or (b) for the furnishing of transportation services designed to meet the distinct need of each individual customer.

Section 204(a)(6) of the Interstate Commerce Act (49 U.S.C. 304(a)(6)), provides:

> It shall be the duty of the Commission—
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> * * * * *
>
> To administer, execute, and enforce all provisions of this chapter, to make all necessary orders in connection therewith, and to prescribe rules, regulations, and procedures for such administration; * * *

Section 208(a) of the Interstate Commerce Act (49 U.S.C. 308(a)) provides:

> Any certificate issued under section 306 or 307 of this title shall specify the service to be

rendered and the routes over which, the fixed termini, if any, between which, and the intermediate and off-route points, if any, at which, and in case of operations not over specified routes or between fixed termini, the territory within which, the motor carrier is authorized to operate; and there shall, at the time of issuance and from time to time thereafter, be attached to the exercise of the privileges granted by the certificate such reasonable terms, conditions, and limitations as the public convenience and necessity may from time to time require, including terms, conditions, and limitations as to the extension of the route or routes of the carrier, and such terms and conditions as are necessary to carry out, with respect to the operations of the carrier, the requirements established by the Commission under section 304(a)(1) and (6) of this title; *Provided, however,* That no terms, conditions, or limitations shall restrict the right of the carrier to add to his or its equipment and facilities over the routes, between the termini, or within the territory specified in the certificate, as the development of the business and the demands of the public shall require.

Section 212(c) of the Interstate Commerce Act (49 U.S.C. 312(c), as amended August 22, 1957, 71 Stat. 411), provides:

> The Commission shall examine each outstanding permit and may within one hundred and eighty days after the date this subsection takes effect institute a proceeding either upon its own initiative, or upon application of a permit holder actually in operation or upon complaint of an interested party, and after notice and hearing revoke a permit and issue in lieu thereof a certificate of public convenience and necessity, if its finds, first, that any person holding a permit whose operations on the date this subsection takes effect do not conform with the

definition of a contract carrier in section 203(a)(15) as in force on and after the date this subsection takes effect; second, are those of a common carrier; and, third, are otherwise lawful. Such certificate so issued shall authorize the transportation, as a common carrier, of the same commodities between the same points or within the same territory as authorized in the permit.

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